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YOKE SAN & ORS

v.

PENTADBIR TANAH, WILAYAH PERSEKUTUAN KUALA LUMPUR & ORS

B

HIGH COURT MALAYA, KUALA LUMPUR
ABDUL WAHAB PATAIL J
[ORIGINATING SUMMONS NO: S6-21-196-2003]
30 AUGUST 2006

C

LAND LAW: *Acquisition of land - Objection against award - Whether defendants had locus standi to file objections - Whether defendants within "person interested" under s. 2 Land Acquisition Act 1960 - Land Acquisition Act 1960, ss. 29(1)(C)*

D

LAND LAW: *Acquisition of land - Compensation - Injurious affection - Acquired land includes service road and parking bays utilised by building owners running businesses alongside - Whether building owners injuriously affected by acquisition - Whether building owners entitled to share in compensation awarded to registered proprietor of acquired land*

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The 1st defendant (land administrator) awarded the plaintiffs a sum of RM3,086,888.60 for acquiring a portion of their land. The 2nd to 16th defendants ('the said defendants') were purchasers of buildings erected on the plaintiffs' land but their buildings did not stand on the portion of the land acquired. They received compensation for disruption to their businesses only. However, they claimed they were entitled to the compensation awarded to the plaintiffs and filed objections pursuant to s. 29(1)(C) of the Land Acquisition Act 1960 ('Act 486'). Due to the objections filed, the 1st defendant deposited the award sum into court until further order. Hence, the plaintiffs' application for declaration, inter alia, that the objections were illegal and ought to be struck down. In their submissions, the said defendants claimed that the plaintiffs failed to subdivide the land and issue individual titles to them despite they having paid consideration. It followed that they had a beneficial and undivided interest in the land and that the plaintiffs held the land in trust for them. Further, the scheduled land included a service road and parking bays that were utilised by the defendants in the running of their respective businesses for many years. Had the plaintiffs taken steps to have the individual titles issued to the said defendants, the said defendants would have had a larger compensation.

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Held (allowing plaintiffs' application):

(1) Under Act 486, only persons interested in any scheduled land have *locus standi* to give notice under ss. 10 or 11 or to apply to court. "Person interested" defined in s. 2 of Act 486 includes every person claiming an interest in compensation but does not include a tenant at will. The meaning of a "person interested" includes a person who has an interest in the scheduled land only. The scheduled land is only that portion of the land acquired and not the whole of the land described in a title. (para 8)

(2) The plaintiffs were acknowledged as the registered proprietors of the land. Although the said defendants bought houses built upon the plaintiffs' land, there had been no subdivision made and no separate titles issued. Therefore, the plaintiffs remained as the registered proprietors of the land and were *prima facie* entitled to the compensation from the 1st defendant in respect of that part of the land acquired. The said defendants have no direct claim against the 1st defendant as registered proprietors under the National Land Code. (para 9)

(3) The said defendants had only an equitable title in respect of that part of the land on which their buildings were built. The scheduled land, however, did not include that part of the land upon which their buildings stood. Further, the said defendants' claim was against the plaintiffs for a share of the compensation and not against the 1st defendant. (para 10)

(4) The service road and parking bays were not sold to the said defendants. There was no basis for a finding that the said defendants had a right to the scheduled land to claim for a share of the compensation from the plaintiffs. (para 12)

(5) The fact that the plaintiffs allowed the said defendants to use the service road and parking bays on the land of which the plaintiffs were the registered owners could not defeat the plaintiffs' title to that part of the land under the National Land Code. The said defendants were at best tenants at will and that was insufficient to constitute "person interested" under Act 486. As the said defendants failed to establish any substantive claim upon any part of the scheduled land, they

A did not have the *locus standi* to appear in respect of any award of compensation for the acquisition of the scheduled land. It followed that the objections filed by them were null and void. (para 13)

B *[Amount paid into court by 1st defendant to be released to the plaintiffs; the said defendants to pay costs.]*

Case(s) referred to:
Magasu Sundaram T Magasu & Ors v. Pentadbir Tanah Wilayah Persekutuan [2003] 2 CLJ 422 HC

C

Legislation referred to:
Land Acquisition Act 1960, ss. 2, 10, 11, 29(1)(c), (2)

For the plaintiffs - Jeev Anand; M/s How Zul & Low
For the 1st defendant - Mohd Zaki Mohd Yasin (Norliza Zulkifli with him); SFC
D *For the 2nd-16th defendants - Sri Dev Nair; M/s Sri Dev & Maila*

Reported by Usha Thiagarajah

E

JUDGMENT

Abdul Wahab Patail J:

F **[1]** The plaintiffs are at all times the registered proprietors of land bearing the registration GRN 45803, Lot No 3910, Mukim Kuala Lumpur, Daerah Kuala Lumpur, Wilayah Persekutuan. A portion of the land was compulsorily acquired under the Land Acquisition Act 1960 (Act 486) by the 1st defendant on behalf of Jabatan Kerja Raya (JKR) on 1 February 2001 (*vide* Warta
G Kerajaan No. 882 dated 1 February 2001) for the purpose of upgrading the roads along Jalan Kelang Lama, Kuala Lumpur. The acquired land is hereinafter referred to as the "schedule land".

[2] An inquiry was conducted by the Land Administrator (the
H 1st defendant), Kuala Lumpur on 13 March 2002, 15 April 2002 and 17 May 2002, and an award for compulsory acquisition was made on 17 May 2002. The 1st defendant made an award of compensation in the sum of RM3,086,888.60 to the plaintiffs. No similar award was made for the 2nd to 16th defendants for the
I "scheduled land" although defendants no. 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 15 and 16 attended the inquiry. Their compensation was

only for interruption/prejudice to their businesses during the development works. Because the 2nd to 16th defendant (except the 13th defendant) had objected, pursuant to s. 29(1)(c) of Act 486, and filed notice in Form N of Act 486 on 28 June 2002, the 1st defendant deposited the whole awarded sum into court until further order *vide* the Penolong Kanan Pendaftar's Order dated 30 January 2003.

[3] Briefly the plaintiffs now claim for the following:

(i) A declaration that the objections put forward by the defendants namely the 2nd to 16th defendants, against the award by the 1st defendant, is illegal and ought to be struck down by this Honourable Court.

(ii) That the *ex parte* order of the court dated 30 January 2003 be set aside.

(iii) That the 1st defendant be ordered to pay the said sum of RM3,086.888.60 forthwith to the plaintiffs.

(iv) Interest.

(v) Costs.

[4] The 2nd to 16th defendants were purchasers of buildings erected upon Lot 3910 which had not, at all material times, been subdivided and transferred to the defendants. The 2nd to the 16th defendants that they were 'aggrieved' by the award of the 1st defendant made on 17 May 2002 namely:

(i) The amount of compensation (jumlah pampasan).

(ii) Persons who are to receive a share of the compensation (orang-orang yang akan menerima pampasan).

[5] It was submitted for the 2nd to 16th defendants that, they had completed their part of their bargain by paying full consideration whilst the plaintiffs and/or the developers have failed in their obligations since to date the plaintiffs have failed to subdivide the land and issue individual titles to the defendants as agreed. Hence, it was submitted, the 2nd to 16th defendants had a beneficial and undivided interest in the land, and the plaintiffs hold the land in trust for the 2nd to 16th defendants, and have an interest in the compensation paid.

[6] It was submitted for the 2nd to 16th defendants that the plaintiffs and/or the developers of the said land had entered into various sale and purchase agreements with the 2nd to 16th defendants wherein the plaintiffs and/or the developers had agreed, *inter alia*;

(i) To bear all the costs to subdivide the said land,

(ii) To apply to the relevant authorities to convert from agriculture to commercial.

(iii) To obtain on behalf of the respective owners of the buildings, namely 2nd to 16th defendants, the individual title of ownership and to ensure their names being registered in the respective titles.

[7] It was explained in submissions that the 2nd to 16th Defendants were aggrieved because:

(i) Being owners of the buildings erected on the said land they have been awarded compensation for only disruption to their businesses

(ii) Being owners of the buildings erected on the said land, the area compulsorily acquired constitutes the service road (frontage) of the said land in question which is directly in front of the 2nd to 16th defendants' buildings.

(iii) For so many years, being owners or the buildings erected on the said land, the 2nd to 16th defendants have been utilizing the service road as well as large car parking bays available along the service road. By virtue of these, the 2nd to 16th defendants have been injuriously affected. By the developments along the service road there is a physical interference with the 2nd to 16th defendants' enjoyment of the right which the defendants make use in connection with their businesses in the buildings, and which gives it a marketable value. This physical interference diminishes the value of the said whole land in question which brings about the claim to compensation for injurious affection.

(iv) Hence, the persons actually aggrieved are the 2nd to 16th defendants and not the plaintiffs because the former have been running their respective businesses for so many years in the buildings alone the service road in front of their buildings. In the event, the plaintiffs had taken steps to have the individual

titles issued to the 2nd to 16th defendants, the lands in questions thus belonging to the defendants would have attracted a large compensation thereby reducing the compensation to the plaintiffs. Hence, the 2nd to 16th defendants interest in the sum of RM3,086,888.60.

[8] Under Act 486, only persons interested in any scheduled land as defined has locus, for example, to give notice under s. 10 or 11 or to apply to court. "Person interested" is defined in s. 2 of Act 486 as including every person claiming an interest in compensation to be made on account of the acquisition of land under the Act but does not include a tenant at will. The meaning of "person interested" was dealt with in *Magasu Sundaram T Magasu & Ors v. Pentadbir Tanah Wilayah Persekutuan* [2003] 2 CLJ 422. It is clear the term includes a person who has an interest in the land acquired, or compensation but only in respect of the scheduled land. The scheduled land is only that portion of the land being acquired and not the whole of the land described in a title, since not the whole of the land described in the title was compulsorily acquired.

[9] The evidence before the court and the submissions for the 2nd to 16th defendants show that the plaintiffs are acknowledged as the registered proprietors of the land bearing the registration GRN 45803, Lot No 3910, Mukim Kuala Lumpur, Daerah Kuala Lumpur, Wilayah Persekutuan. Although the 2nd to 16th defendants bought houses built upon the land, there had been no subdivision made and no separate titles issued. Thus, the plaintiffs remain as the registered proprietors of the land and is *prima facie* entitled to the compensation from the 1st defendant in respect of that part of the land that was acquired (the scheduled land). The 2nd to the 16th defendants have no direct claim against the 1st defendant as registered proprietors under the National Land Code.

[10] The 2nd to the 16th defendants rely upon the inclusive interpretation of "persons interested" under Act 486 would include persons having an equitable title, there is clear equitable title only in respect of that part of the land upon which their buildings were built. The scheduled land, however, did not include that part of the land upon which their buildings stand. Further, although the 1st defendant may not have referred their objections to the court,

A the 2nd to 16th defendants (except 10th, 13th and 14th defendants) attended the inquiry and have not made complaint in their submissions before this court on this ground. That being the case their remaining claim is against the plaintiffs for a share of the compensation awarded to the plaintiffs, and not against the 1st
B defendant.

[11] Stopping short of claiming they had bought the part of the scheduled land upon which the service road and parking bays alongside it were built, the 2nd to the 16th defendants base their
C claim on the fact they had use of the service road in front of the buildings they had bought and paid for, and of the large car parking bays along the service road.

[12] There is no evidence before the court that the land upon
D which the service road and the parking bays along the service road are built, or any land other than the buildings, had been sold to the 2nd to the 16th defendants. There is no evidence which part of the service road and parking bays alongside are within the scheduled land and which are not. There is no basis for a finding
E that the 2nd to 16th defendants had any right to those parts of the scheduled land as to base a claim for any share of the compensation from the plaintiffs. Indeed, upon close examination, it is also clear there is no evidence of which part of the land upon which the service road and parking bays are built belonged to
F which defendant amongst the 2nd to the 16th defendants.

[13] The fact the 2nd to the 16th defendants had been allowed by the plaintiffs to use the service road and parking bays on the land of which the plaintiffs are the registered owners cannot defeat the plaintiffs' title under the National Land Code to that part of
G the land. The 2nd to the 16th defendants are at best tenants at will, which is insufficient to constitute a "person interested" under Act 486.

[14] The foregoing make it clear that the 2nd to the 16th
H defendants have failed to establish any substantive claim upon any part of the scheduled land to set up any locus to appear in respect of any award of compensation for the acquisition of the scheduled land against the 1st defendant, or as against the plaintiffs, for any share of the compensation awarded to the
I plaintiffs. There is, therefore, no reason for the 1st defendant to refer the 2nd to the 16th defendants' objections to the court

under Act 486. However, since the claims by the 2nd to the 16th defendants also involve a dispute as to receive a share of any compensation paid, the 1st defendant properly paid the compensation into court under s. 29(2) of Act 486.

[15] For these reasons the court, after hearing the parties, granted a declaration that the objections filed by the 2nd to 16th defendants dated 28 June 2002 against the award by the 1st defendant dated 17 May 2002 is null and void, and ordered that the amount paid into court by the 1st defendant be released to the plaintiffs. The court also ordered that the 2nd to 16th defendants pay costs to the plaintiffs. No order as to costs was made against the 1st defendant.